DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. FORT BAKER KIDDIE KOLLEGE Respondent	Case No.: I-00-40453

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 2-1801.01 *et seq.*) and Title 29 Chapter 3 of the District of Columbia Municipal Regulations ("DCMR"). By Notice of Infraction (No. 00-40453) served January 28, 2002, the Government charged Respondent Fort Baker Kiddie Kollege with a violation of 29 DCMR 325.4 for allegedly failing to have annual physical examination reports for each infant or child enrolled in its child development facility,[1] and 29 DCMR 326.5(i)-(j) for allegedly failing to maintain health records for each infant or child enrolled in its child development facility.[2] The Notice of Infraction alleged that the violations took place on November 16, 2001 at 2101 28th Street, S.E., and sought

[1] 29 DCMR 325.4 provides: "After admission to a child development facility, each infant or child shall be required to obtain an annual physical examination, the results of which shall be submitted to the caregiver or director of the child development facility on a form approved by the Mayor."

[2] 29 DCMR 326.5(i)-(j) provides: "A health record shall be maintained for each infant or child enrolled in a child development facility which shall contain the following information: . . . (i) Specific immunizations received, with dates, [and] (j) Result of tuberculin testing. . . ."

fine of $500 for the alleged violation of § 325.4, and $50 for the alleged violation of § 326.5,[3] for a total fine sought of $550.

After initially filing an answer denying the charges listed in the Notice of Infraction, Respondent subsequently moved to amend its answer to Admit with Explanation pursuant to D.C. Official Code § 2-1801.02(a)(2), and I granted that motion. Respondent also requested a reduction or suspension of any fines. Respondent, through its director, Pennington Greene, explained that the violations cited in the Notice of Infraction were "inadvertent and were not corrected within the allowable timeframe due to a misreading of the violation." Respondent also explained that "the violations have been abated and procedures have been put in place to prevent occurrences in the future."

By order dated March 8, 2002, I permitted the Government an opportunity to respond to Respondent's plea and request. Among other things, the Government noted that, "Respondent facility has had longstanding problems with the issues that form the basis of this case, the requirements concerning health examinations and immunizations, and records thereof, for enrolled children." In light of Respondent's admission of noncompliance and eventual abatement of the violations, however, the Government represented that it would not be opposed to a modest reduction in the fines.

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[3] A violation of § 326.5 is a Class 4 infraction, and, as such, a fine of $50 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(d)(1) and 3222.3. Although the Notice of Infraction refers to violations of two subparts of § 326.5, the Government has apparently exercised its prosecutorial discretion to seek only the fine authorized for one violation of that section.

Based upon the entire record of this matter, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. At all times relevant to this matter, Respondent Fort Baker Kiddie Kollege operated as a child development facility at 2101 28th Street, S.E. At all times relevant to this matter, Pennington Greene served as Respondent's director.

2. By its answer of Admit with Explanation, Respondent has admitted violating 29 DCMR 325.4 on November 16, 2001 at 2101 28th Street, S.E.

3. On November 16, 2001, Respondent failed to have each infant or child enrolled in its child development facility "obtain an annual physical examination, [and submit the] results of which . . . to the caregiver or director of the child development facility on a form approved by the Mayor" at 2101 28th Street, S.E. 29 DCMR 325.4.

4. By its answer of Admit with Explanation, Respondent has admitted violating 29 DCMR 326.5(i)-(j) on November 16, 2001 at 2101 28th Street, S.E.

5. On November 16, 2002, Respondent failed to maintain health records for "each infant of child enrolled in [its] child development facility showing (i) Specific immunizations received, with dates, [and] (j) Result of tuberculin testing" at 2101 28th Street, S.E. 29 DCMR 326.5.

6. Respondent's admitted violations of 29 DCMR §§ 325.4 and 326.5 were inadvertent and eventually abated upon Respondent's understanding of the nature of the violations.

7. Respondent has accepted responsibility for its unlawful conduct.

III. Conclusions of Law

1. Respondent violated 29 DCMR 325.4 on November 16, 2001. A fine of $500 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(b)(1) and 3222.1(m). Respondent also violated 29 DCMR 326.5 on November 16, 2001. A fine of $50 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(d)(1) and 3222.3.

2. Respondent has requested a reduction or suspension of the authorized fines in this case on the grounds of inadvertence, misapprehension and eventual abatement. Addressing Respondent's grounds *in seriatim*, the paramount purpose behind the Government's adoption and enforcement of the regulations relating to child development facilities is the protection of the children enrolled in those facilities. *See* 29 DCMR 300.1. As such, a caregiver's failure to comply with those regulations wholly undermines the regulatory purpose, whether that failure is inadvertent or otherwise. In turn, the inadvertent nature of Respondent's violations does not warrant a reduction of the authorized fines.

3. Second, the provisions of §§ 325.4 and 326.5 clearly specify what is required of the caregiver to be in compliance. Respondent does not specify in its explanation

what precisely it misunderstood with respect to these basic requirements. As this administrative court recently noted, however, such a misapprehension of basic child care requirements on the part of a child development facility "at best constitutes a profound and unacceptable misunderstanding of the laws regulating such facilities, and, at worst, constitutes a willful disregard of the Government's [regulatory] authority." *DOH v. Citywide Learning Center*, OAH No. I-00-40905 at 6 (Final Order, June 19, 2002). Accordingly, Respondent's misunderstanding of the nature of the charged violations does not warrant a reduction of the authorized fines.

4. Finally, while Respondent represents, and the Government recognizes, that the violations cited in the Notice of Infraction were eventually abated, there is no evidence in the record indicating that such abatement was prompt, and, therefore, potentially mitigating. *See* D.C. Official Code § 2-1801.03(b)(6). In fact, by Respondent's own admission, the abatement period was a protracted one due to Respondent's misunderstanding of the nature of the violations. Accordingly, Respondent's eventual abatement of the violations does not warrant a reduction of the authorized fines.

5. In light of Respondent's acceptance of responsibility, however, I will reduce the authorized fine of $500 for the violation of 29 DCMR 325.4 to $425, and will reduce the authorized fine of $50 for the violation of 29 DCMR 326.5 to $40. *See* D.C. Official Code § 2-1802.02(a)(2); U.S.S.G. § 3E1.1; 18 U.S.C. § 3553.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ___ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the total amount of **FOUR HUNDRED SIXTY-FIVE DOLLARS ($465)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED 07/10/02

Mark D. Poindexter
Administrative Judge